

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. STATE BOARD OF NURSING

PREAMBLE

- | 1. Sections Affected | Rulemaking Action |
|-----------------------------|--------------------------|
| Article 6 | New Article |
| R4-19-601 | New Section |
| R4-19-602 | New Section |
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| R4-19-606 | New Section |
| R4-19-607 | New Section |
| R4-19-608 | New Section |
| R4-19-609 | New Section |
| R4-19-610 | New Section |
| R4-19-611 | New Section |
| R4-19-612 | New Section |
| R4-19-613 | New Section |
| R4-19-614 | New Section |
| R4-19-615 | New Section |
| Article 7 | New Article |
| R4-19-701 | New Section |
| R4-19-702 | New Section |
| R4-19-703 | New Section |
| R4-19-704 | New Section |
| R4-19-705 | New Section |
| R4-19-706 | New Section |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. §§ 32-1606(A) and 41-1003
Implementing statutes: A.R.S. §§ 32-1606(B)(5), (8), (9), and (10) and (C), (D), and (E); 32-1663; 32-1664; 32-1665; and 41-1062(B)
3. The effective date of the rules:
October 10, 1996
4. A list of all previous notices appearing in the Register, addressing the final rule:
Notice of Rulemaking Docket Opening:
2 A.A.R. 1069, February 23, 1996
Notice of Proposed Rulemaking:
2 A.A.R. 1088, March 1, 1996
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Audrey Rath, R.N.
Nurse Practitioner Consultant
Address: State Board of Nursing
1651 East Morton, Suite 150
Phoenix, AZ 85020

Arizona Administrative Register
Notices of Final Rulemaking

Telephone: (602) 255-5092

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6. An explanation of the rule, including the agency's reasons for initiating the rule:

The proposed rules are necessary to fully codify the administrative hearing practices of the Board, to codify new and existing procedures for public participation in rulemaking, and to comply with current rulemaking guidelines. There are several new rules proposed which reflect changes in the Arizona Revised Statutes. The proposed rules conform to present rulemaking requirements, both in form and content.

Articles 6 and 7 are being adopted in order to codify the practices and procedures which have been followed by the Board for administrative proceedings before the Board and public participation in rulemaking, respectively. Article 6 includes initiation of a hearing, denial of request for hearing, representation, notice of hearing, filing, computation of time, extension of time, record of hearings, service, proof of service, subpoenas, procedure at hearing, evidence, recommended decision, Board's decision, rehearing or review of decision, and effectiveness of orders. Article 7 provides for the agency rulemaking record, petition for adoption of a rule or review of agency practice or substantive policy statement, public comments to rules, objection to rule based upon economic, small business or consumer impact, oral rule proceedings, petition for delayed effective date for rules, and written criticism of a rule.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

In view of the fact that this proposed rule package merely codifies administrative hearing practices which have been utilized by the Board for many years, there is no new economic, small business, or consumer impact expected in this effort to merely memorialize status quo. In addition, the procedures for public participation in rulemaking activities are required by law and actual public participation, if a person so chooses to participate, should have little or no cost impact.

The primary impact will be on the Board of Nursing which will incur minimal costs in promulgating this rule package. There will be no other actual costs incurred as the administrative procedures have been in use for many years and are being formally codified. Delineating the procedures available for public or regulated community participation is not expected to add any significant costs to the Board.

The individuals most directly affected by these rules are professional and practical nurses as well as nursing assistants. Cost impact of these rules, if any, upon any 1 of them would be expected to be negligible. As these regulated individuals have been subject to administrative enforcement proceedings and have had the statutory right to participate in rulemaking, these rules will not be a cost to them but, rather, will benefit them. First, by more fully detailing the administrative hearing and rulemaking practices and procedures of the Board, affected individuals will have a fuller understanding of their rights and standing in the process. Second, codifying the Board's public participation procedures will allow individuals interested in participating to have a source of information to gain an understanding of the available procedures, thereby permitting them to more effectively take part in those processes.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

Table of Contents and all Section Headings

Capitalized.

R4-19-601

At subsection (1), replace "his" with "the Attorney General's".

At subsection (3), replace "Hearing officer" by "Administrative law judge".

At subsection (4), delete "4. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party."

R4-19-602

At subsection (A), replace "cite" by "state".

At subsection (A)(1) add a new provision, "1. The identity of the person requesting the hearing," and renumber subsequent subsections.

At renumbered subsection (A)(3) replace "The statute or rule entitling the person to" by "The reasons necessitating".

At subsection (B), replace "or a designee may serve as hearing officer" by "may conduct hearings or other proceedings or request that a matter be assigned to an administrative law judge".

R4-19-604

Replace ", except that a person other than an individual" by ". In those hearings conducted by a panel of Board members, a corporation".

Arizona Administrative Register
Notices of Final Rulemaking

R4-19-605

At subsection (B)(1), add "date," before "time" and replace "place" by "location,".

At subsection (B)(2), replace "are" with "is".

Add a new (B)(3) to read: "A reference to the particular sections of the statutes and rules involved".

Add a new (B)(4) to read: "A short plain statement of the matters asserted. If the Board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished."

Add a new (B)(5) to read: "The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant." and renumber the remaining subsections.

At renumbered subsection (B)(6), add "," after "address", delete "official title,"; add "Board's executive director or Board designee if the"; and replace "officer for the hearing," with "is to be conducted by the Board."

At renumbered subsection (B)(7), replace the "a" before the last "hearing" with "the".

At renumbered subsection (B)(8), replace "any counsel or employee who has been designated to appear for the Board" by "the Attorney General representing the state at the hearing".

R4-19-606

At subsection (B), 1st sentence, delete "Arizona" and "of Nursing" and replace "such" with "the". At the 3rd sentence, replace "simultaneously" with "concurrently". At the last sentence, replace "its" with "the document's".

At subsection (C), replace "one" with "1".

At subsection (D), 1st sentence, replace "these rules" with "this Article", and add "," after "event". At the 2nd sentence, add "," after "Sunday". At the 3rd sentence, add "state" before "holiday". At the end of subsection (D), add "Whenever a notice or other paper is served by mail upon a party, 5 calendar days shall be added to the prescribed period."

At subsection (E), insert "panel of Board members, if the" before the word "hearing", delete the word "officer", and add "is to be conducted by the Board, or the administrative law judge".

R4-19-608

Change the title from "Service; proof of service" to "Service Requirements".

At subsection (A), delete "Service of process shall be required with respect to documents under this Article. The party responsible for filing the document shall serve it." and substitute "The complaint and notice of hearing shall be served in accordance with A.R.S. § 32-1664." Also insert "service, or if" prior to the word "service" in the last line, and replace "or the date when placed in the mail if served by mail" with "is made by publication, at the completion of publication".

Delete subsection (B) and reletter subsection (C).

At relettered subsection (B), insert "other than the complaint and notice of hearing" following the word "documents".

At relettered subsection (B)(1), replace "noncompliance pursuant to A.R.S. § 32-1644(D), notices of hearing or prehearing conference" with "settlement conferences", add "," after "decisions", and delete "correct".

At relettered subsection (B)(2) delete "correct".

At relettered subsection (B)(3) replace "shall be made on such attorney" with "upon the attorney shall constitute service upon the party."

Add a new (B)(4) to read "Service shall be complete at the time of personal service or the date when certified or regular mail is placed in the mail, if served by mail."

R4-19-609

At subsection (A) strike ", either at the hearing officer's discretion or at the request of any party. The Board may decline to issue a subpoena for irrelevant, immaterial or cumulative evidence" and replace with ". The Office of Administrative Hearings may issue a subpoena pursuant to A.R.S. § 41-1092.02. The party requesting the subpoena shall be responsible for locating and serving the person or entity to whom it is directed".

At subsection (B) rewrite to read: "A request for subpoena shall be in writing and filed with the Board, if the hearing is to be conducted by a panel of Board members, or filed with the Office of Administrative Hearings, if the hearing is being conducted by an administrative law judge, and served on each party at least 10 days prior to the date set for hearing. If good cause exists, a party may submit a request less than 10 days prior to the date set for hearing. The request shall include:".

At subsection (B)(1) replace "or" with "whose testimony is sought or a description of the" and replace "requested" by "sought to be produced".

At subsection (B)(2), delete "and".

Notices of Final Rulemaking

At subsection (B)(3) replace "person or document subpoenaed, which are necessary" with "person's testimony or documents subpoenaed with sufficient specificity to allow" and replace "and materiality." with "to the issues in dispute; and".

Add a new subsection (B)(4) to read "An explanation, when applicable, as to why the party was unable to submit the request 10 days prior to the date set for hearing."

At subsection (C), replace "two" with "2", replace "must" with "shall", and replace "the" before "additional" with "each".

Deleted proposed subsection (D) language and substitute "Any person served with a subpoena may file a motion to quash the subpoena within 10 days of the date of service of the subpoena, but in no event less than 24 hours before the hearing. The motion shall be filed with the Board, if the subpoena was issued by the Board, or filed with the Office of Administrative Hearings, if the subpoena was issued by that agency."

Deleted proposed subsection (E) language and substituted "Any person may file a motion to quash if the evidence or testimony sought does not relate to any issue in dispute, if the subpoena does not describe with sufficient specificity the testimony or evidence sought to be produced, or for any other reason sufficient in law to show the subpoena is invalid. The ruling on the motion to quash shall state the grounds for the ruling. The motion to quash and any ruling thereon shall become part of the record."

R4-19-610

At paragraph (1) replace "The" with "A panel of"; add "members or the administrative law judge" after the word "Board"; and delete "and shall conform with any prehearing order".

At paragraph (2), replace "To enable disclosure of relevant facts and issues, the Board" with "All parties", and replace "give all parties" with "have".

Delete proposed paragraph (3) language and substitute "Parties may stipulate to any facts that are not in dispute. Stipulations may be made in writing or orally by reading the stipulations into the record of the hearing. Stipulations shall be binding upon the parties unless the panel of Board members, if the matter is to be conducted by the Board, or the administrative law judge grants permission to withdraw the stipulation."

At paragraph (4), replace "The Board may conduct all" with "All", add "may be conducted" after the word "hearing", add ",", after "television", and replace "so long as" with "provided that".

At paragraph (5) add "," after "television" and "monitor" in the 2nd sentence.

R4-19-611

At subsection (A), 2nd sentence, replace "or" with "and". At the 3rd sentence, add "panel of" before the word "Board" and "members, if the hearing is to be conducted by the Board, or the administrative law judge" immediately after; delete "the hearing officer has", and add "," after "probative" and "immaterial". At the last sentence, add "panel of" before "Board" and "members or the administrative law judge" after; replace "reasonably" by "reasonable," replace "would" with "could", and replace "civil court trial." by "judicial proceeding".

At subsection (B), replace "a copy of each documentary exhibit" with "the original to the Board or administrative law judge, and a copy", add "panel of" before the word "Board", and "members, if the hearing is to be conducted by the Board," after, and delete the last sentence.

R4-19-612

Deleted "or Board Decision" from the Section title.

At subsection (A), replace "When a matter is not heard by the Board" with "The panel of Board members or", and replace "a hearing officer" with "the administrative law judge".

At subsection (B), delete "or a decision by the Board" and delete "recommended" at the end of the sentence.

At subsection (C), replace "hearing officer or" with "panel of" and add "members or the administrative law judge" after the word "Board".

At subsection (D) replace "60" with "15".

At subsection (F), 2nd sentence, delete "or exceptions", replace " , with" with "and shall include", and replace "and" with "or". Delete the last sentence.

R4-19-613

At subsection (A), add "75 days" after the word "than", delete "the next regularly scheduled non-telephonic Board meeting", and delete "from the hearing officer".

At subsection (B), delete "hearing officer's or Board panel's", and replace "and recommended remedy" with "and disciplinary action, if any".

Arizona Administrative Register
Notices of Final Rulemaking

R4-19-614

At subsection A, 1st sentence, replace "such" with "the", and replace "not later than ten days after service of the decision" with "within the time limits set in A.R.S. § 32-1665(A)". At the 2nd sentence, delete "to have been", add "when" before "mailed", replace "to the party at" with "by certified mail to", and replace "last know residence or place of business" with "address of record".

At subsection (B), add ""or review" after "rehearing" in the 1st sentence. At the 2nd sentence, replace "A" by "Any other party may file a, delete "may be filed", replace "seven" by "10", replace "such" with "the" and delete "by any other party".

At subsection (C)(1), replace "or its hearing officer or " with ", the administrative law judge or panel of Board members.", and delete "order or".

At subsection (C)(2), add "panel of" before the word "Board", and replace "or its hearing officer" with "members, the administrative law judge".

At subsection (C)(6), replace "rejection" with "exclusion" and add "during the pendency of the proceeding or" after "occurring".

At subsection (D), add "or review" after "rehearing" in the 1st sentence and change "matters so specified" to "specified matters" in the last sentence.

At subsection (E), 1st sentence, replace "Not later than ten days after a decision is rendered, the Board may on its own initiative" with "Within the time limits of A.R.S. § 32-1665, the Board may, on its own initiative,", and add "or review" after "rehearing". At the 2nd sentence, replace "or" with "and". At the last sentence, delete "such".

At subsection (F), replace "seven" by "10".

R4-19-615

At subsection (A), add "review or" after "or", and delete "when the decision is rendered, if further review is unavailable; or,".

At subsection (B), delete "in a particular decision,", replace "such" with "a", replace "peace, health and safety" with "health, safety, or welfare", add ", after "unnecessary", and add "or review," after the word "rehearing".

R4-19-702

At the 1st line, add "," after "amend", replace "a" with "to" before "review", and delete "of" after "review".

At subsection (3), 1st sentence, replace "A.A.C." with "Arizona Administrative Code", add "rule" before "title". At the 2nd sentence, replace "Included in the" with "The", replace "be" with "include", and replace "," with ",".

At subsection (5), add "," after "amended". At subsection (5)(c), replace "any" with "as".

At subsection (7), delete ", the reasons or other supporting ", add ", after "impact", and replace "of either or both of the following" with "that". At subsection (7)(a), add "; or" at the end of the sentence. At both subsections (a) and (b) add "," after each "business".

R4-19-703

At subsection (A), add "upon" after "or" and add "Arizona Administrative" before "Register".

At subsection (B), replace "Any document" with "A written comment", and replace "document" with "comment".

R4-19-704

At subsection (A)(3), add "Arizona Administrative" before "Register".

At subsection (B), add "," after "registers".

At subsection (C)(4), make "representatives" singular. At subsection (C)(6), replace "received" with "sent".

R4-19-706

At subsection (B), add "," after "unreasonable".

At subsection (C), replace "ten" with "10".

10. A summary of the principal comments and the agency response to them:

No public comments were received, either written or oral.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

None.

Arizona Administrative Register
Notices of Final Rulemaking

13. Was this rule previously adopted as an emergency rule?
No.

14. The full text of the rules follows:

TITLE 4. COMMERCE, PROFESSIONS, AND OCCUPATIONS

CHAPTER 19. STATE BOARD OF NURSING

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

Section

- R4-19-601. Definitions
- R4-19-602. Initiation of a Hearing
- R4-19-603. Denial of Request for Hearing
- R4-19-604. Representation
- R4-19-605. Notice of Hearing
- R4-19-606. Filing; Computation of Time; Extension of Time
- R4-19-607. Record of Hearings
- R4-19-608. Service Requirements
- R4-19-609. Subpoenas
- R4-19-610. Procedure at Hearing
- R4-19-611. Evidence
- R4-19-612. Recommended Decision
- R4-19-613. Board's Decision
- R4-19-614. Rehearing or Review of Decision
- R4-19-615. Effectiveness of Orders

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

Section

- R4-19-701. Agency Record; Directory of Substantive Policy Statements
- R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business or Consumer Impact
- R4-19-703. Public Comments
- R4-19-704. Oral Proceedings
- R4-19-705. Petition for Delayed Effective Date
- R4-19-706. Written Criticism of Rule

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

R4-19-601. Definitions

In this Article, unless the context otherwise requires:

1. "Attorney General" means the Attorney General of the State of Arizona and the Attorney General's designees.
2. "Complaint" means a formal written charge, brought by the Board after investigation, inspection, or review to initiate formal proceedings.
3. "Administrative law judge" means an individual assigned by the Office of Administrative Hearings to conduct hearings or other proceedings.

R4-19-602. Initiation of a Hearing

- A. A hearing shall be initiated in the manner provided by the statute or rule authorizing the hearing. When a hearing is initiated by a request for hearing served upon the Board, the request for hearing shall be in writing and shall clearly state:
 1. The identity of the person requesting the hearing,
 2. The specific actions of the Board which are the basis of the hearing request, and
 3. The reasons necessitating a hearing.
- B. A panel of Board members may conduct hearings or other proceedings or request that a matter be assigned to an administrative law judge.

R4-19-603. Denial of Request for Hearing

If the Board denies the request for hearing, the Board shall provide to the applicant a written copy of the decision stating the reasons for denial.

R4-19-604. Representation

Any party may participate in the hearing in person or through legal counsel. In those hearings conducted by a panel of Board members, a corporation shall be represented by an attorney. A party shall pay for its own legal representation.

R4-19-605. Notice of Hearing

- A. The Board shall set the time and place of the hearing and give written notice to all parties.
- B. The notice shall contain:
 1. The date, time, location, and nature of the hearing;
 2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
 3. A reference to the particular sections of the statutes and rules involved;
 4. A short and plain statement of the matters asserted. If the Board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
 5. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
 6. The name, mailing address, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;
 7. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
 8. The names and mailing addresses of persons to whom notice is being given, including the Attorney General representing the state at the hearing.
- C. The notice may include any other matters that the Board considers desirable to expedite the proceedings.

R4-19-606. Filing; Computation of Time; Extension of Time

- A. The Board shall maintain a docket of all proceedings and shall assign each proceeding a number.
- B. All papers in any proceeding shall be filed in the office of the Board within the time limit, if any, for the filing. Papers may be transmitted by ordinary or express mail, or otherwise delivered, but must be timely received at the office of the Board. Service thereof shall be made concurrently on all parties to the proceeding. A document shall be considered to be filed on the date received by the Board, established by the date stamp of the office of the Board on the document's face.
- C. Unless otherwise specifically provided in the rules or by an order of the Board, an original and 1 copy of all papers shall be filed.
- D. In computing any period of time prescribed or allowed by this Article, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs

Arizona Administrative Register
Notices of Final Rulemaking

until the end of the next day which is neither Saturday, Sunday, nor a state holiday. The computation shall include intermediate Saturdays, Sundays and state holidays. Whenever a notice or other paper is served by mail upon a party, 5 calendar days shall be added to the prescribed period.

- E. For good cause shown, the panel of Board members, if the hearing is to be conducted by the Board, or the administrative law judge may grant continuances and extensions of time.

R4-19-607. Record of Hearings.

The Board shall maintain a complete and separate record containing all documents and exhibits filed in connection with each hearing. Such record shall be made available upon request to the public during regular business hours.

R4-19-608. Service Requirements.

- A. The complaint and notice of hearing shall be served in accordance with A.R.S. § 32-1664. The original shall be filed with and retained by the Board and a copy shall be served on each party. Service shall be complete at the time of personal service, or if service is made by publication, at the completion of publication.
- B. Requirements for service of documents other than the complaint and notice of hearing shall be:
1. For notices of settlement conferences, decisions, or final orders of the Board, transmission either by personal service or by certified mail to the address of record;
 2. For all other documents, either by personal service, or by certified or regular mail to the address of record;
 3. When a party is represented by an attorney, service upon the attorney shall constitute service upon the party; or
 4. Service shall be complete at the time of personal service or the date when certified or regular mail is placed in the mail, if served by mail.

R4-19-609. Subpoenas.

- A. The Board may issue a subpoena pursuant to A.R.S. § 32-1664(I). The Office of Administrative Hearings may issue a subpoena pursuant to A.R.S. § 41-1092.02. The party requesting the subpoena shall be responsible for locating and serving the person or entity to whom it is directed.
- B. A request for subpoena shall be in writing and filed with the Board, if the hearing is to be conducted by a panel of Board members, or filed with the Office of Administrative Hearings, if the hearing is being conducted by an administrative law judge, and served on each party at least 10 days prior to the date set for hearing. If good cause exists, a party may submit a request less than 10 days prior to the date set for hearing. The request shall include:
1. The identification of the person whose testimony is sought or a description of the document sought to be produced;
 2. All addresses at which the subpoena shall be served;
 3. The facts expected to be established by the person's testimony or documents subpoenaed with sufficient specificity to allow for a determination of relevancy to the issues in dispute; and
 4. An explanation, when applicable, as to why the party was unable to submit the request 10 days prior to the date set for hearing.
- C. If more than 2 subpoenas are requested to establish a single fact in dispute, the request for subpoena shall state the reason why each additional subpoena is not merely repetitive.
- D. Any person served with a subpoena may file a motion to quash the subpoena within 10 days of the date of service of the subpoena, but in no event less than 24 hours before the hearing. The motion shall be filed with the Board, if the subpoena was

issued by the Board, or filed with the Office of Administrative Hearings, if the subpoena was issued by that agency.

- E. Any person may file a motion to quash if the evidence or testimony sought does not relate to any issue in dispute, if the subpoena does not describe with sufficient specificity the testimony or evidence sought to be produced, or for any other reason sufficient in law to show the subpoena is invalid. The ruling on the motion to quash shall state the grounds for the ruling. The motion to quash and any ruling thereon shall become part of the record.

R4-19-610. Procedure at Hearing.

At a hearing:

1. A panel of Board members or the administrative law judge shall regulate the course of the proceedings.
2. All parties shall have the opportunity to testify, respond, present evidence and argument, present witnesses, conduct examination and cross-examination, and submit rebuttal evidence.
3. Parties may stipulate to any facts that are not in dispute. Stipulations may be made in writing or orally by reading the stipulations into the record of the hearing. Stipulations shall be binding upon the parties unless the panel of Board members, if the matter is to be conducted by the Board, or the administrative law judge grants permission to withdraw the stipulation.
4. All or part of the hearing may be conducted by telephone, television, or other electronic means, provided that each party has an opportunity to participate in the entire proceeding as it takes place.
5. All hearings shall be open to public observation, except where closed pursuant to an express provision of law. A hearing conducted by telephone, television, or other electronic means shall be made available to members of the public by the opportunity during the hearing to hear the proceedings by speakerphone, monitor, or other electronic means. In addition, members of the public shall be allowed during regular office hours to hear or inspect the record of the Board and to inspect any transcript of the hearing obtained by the Board.

R4-19-611. Evidence.

- A. All witnesses at a hearing shall testify under oath. All parties shall have the right to present such oral and documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The panel of Board members, if the hearing is to be conducted by the Board, or the administrative law judge shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious. The panel of Board members or the administrative law judge shall admit the kind of evidence on which reasonable, prudent people could rely, even if it would be inadmissible in a judicial proceeding.
- B. A party submitting documentary evidence shall furnish the original to the Board or administrative law judge, and a copy to each party of record present; the panel of Board members, if the hearing is to be conducted by the Board, and the court reporter attending the hearing.

R4-19-612. Recommended Decision.

- A. The panel of Board members or the administrative law judge shall render a recommended decision.
- B. A recommended decision shall include separately stated findings of fact, conclusions of law, and the reasoning for the disciplinary action, if any.
- C. Findings of fact shall be as required by A.R.S. § 41-1061(G).

Notices of Final Rulemaking

The experience, technical competence, or specialized knowledge of the panel of Board members or the administrative law judge may be utilized in evaluating evidence.

- D. A recommended decision pursuant to this Section shall be rendered within 15 days after conclusion of the hearing or after submission of proposed findings by the parties, unless the Board waives or extends this period for good cause.
- E. The recommended decision shall be delivered to the Board.
- F. The Board shall transmit a copy of the recommended decision to each party. Each party may file a memorandum of objections to it. The memorandum shall detail reasons why the recommended decision is in error and shall include appropriate citations to the record, statutes, rules or other authority.

R4-19-613. Board's Decision.

- A. No later than 75 days following receipt of a recommended decision, the Board shall consider the recommended decision, together with any sufficient, timely exceptions filed.
- B. The Board may adopt, reject, or amend the recommended findings of fact, conclusions of law, and disciplinary action, if any.

R4-19-614. Rehearing or Review of Decision

- A. Any party in a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board, within the time limits set in A.R.S. § 32-1665(A), a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed served when personally delivered or when mailed by certified mail to the party's address of record.
- B. A motion for rehearing or review under this rule may be amended at any time before it is ruled upon by the Board. Any other party may file a response within 10 days after service of the motion or amended motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
 1. Irregularity in the administrative proceedings of the agency, the administrative law judge or panel of Board members, the prevailing party, or any abuse of discretion, whereby the moving party was deprived of a fair hearing;
 2. Misconduct of the panel of Board members, the administrative law judge, or the prevailing party;
 3. Accident or surprise which could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or exclusion of evidence or other errors of law occurring during the pendency of the proceeding or at the administrative hearing;
 7. That the decision is not justified by the evidence or is contrary to law.
- D. Upon the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (C). An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those specified matters.
- E. Within the time limits of A.R.S. § 32-1665, the Board may, on its own initiative, order a rehearing or review of its decision for any reason for which it might have granted a rehearing or

review on motion of a party. After giving the parties and their counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting a rehearing shall specify the grounds therefor.

- F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits.

R4-19-615. Effectiveness of Orders

- A. Except as provided in subsection (B), a decision shall be final upon expiration of the time for filing a request for rehearing or review or upon denial of such request, whichever is later. If a rehearing is granted, the decision shall be stayed until readopted or another order is issued.
- B. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, the decision shall be effective when issued and any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

R4-19-701. Agency Record; Directory of Substantive Policy Statements

The official rulemaking record and directory of substantive policy statements is located in the office of the Board and may be reviewed any working day, Monday through Friday, from 8 a.m. until 5 p.m., except state holidays.

R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact

A petition to adopt, amend, or repeal a rule or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule, pursuant to A.R.S. § 41-1033, or to object to a rule in accordance with A.R.S. § 41-1056.01, shall be filed with the Board as prescribed in this Section. Each petition shall contain:

1. The name and current address of the person submitting the petition.
2. For the adoption of a new rule, the specific language of the proposed rule.
3. For the amendment of a current rule, the citation for the applicable Arizona Administrative Code number and rule title. The request shall include the specific language of the current rule, any language to be deleted shall be stricken through but legible, and any new language shall be underlined.
4. For the repeal of a current rule, the citation for the applicable A.A.C. number and title of the rule proposed for repeal.
5. The reasons the rule should be adopted, amended, or repealed, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. Additional supporting information for the petition may be provided, including:
 - a. Any statistical data or other justification, with clear references to attached exhibits;
 - b. An identification of what persons or segment of the

Arizona Administrative Register
Notices of Final Rulemaking

public would be affected and how they would be affected; and

- c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or as written comments offered by the public.
6. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the agency.
7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence that:
 - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted on adoption of the rule; or
 - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement on adoption of the rule and that actual impact imposes a significant burden on persons subject to the rule.
8. The signature of the person submitting the petition.

R4-19-703. Public Comments

- A. Any person may comment upon a rule proposed by the Board by submitting written comments on the proposed rule or upon any other matter noticed for public comment in the *Arizona Administrative Register* to the Board on or before the date of the close of record.
- B. A written comment is considered to have been submitted on the date it is received by the Board, except if a comment is mailed, the date of receipt shall be the postmarked date.
- C. All written comments received pursuant to A.R.S. § 41-1023 shall be considered by the Board.

R4-19-704. Oral Proceedings

- A. Requests for oral proceedings, as prescribed in A.R.S. § 41-1023(C), shall:
 1. Be filed with the Board;
 2. Include the name and current address of the person making the request; and
 3. Refer to the proposed rule and include, if known, the date and issue of the *Arizona Administrative Register* in which the notice was published.
- B. The oral proceeding shall be recorded either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.

C. The presiding officer shall utilize the following guidelines to conduct oral proceedings:

1. Voluntary registration of attendees.
2. Registration of persons intending to speak. Registration information shall include the registrant's name, representative capacity, if applicable, a notation of their position with regard to the proposed rule and the approximate length of time they wish to speak.
3. Opening of the record. The presiding officer shall open the proceeding by identifying the rules to be considered, the location, date, time and purpose of the proceeding, and present the agenda.
4. A statement by Board representative. The statement shall explain the background and general content of the proposed rules.
5. A public oral comment period. Comments may be limited to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to prevent undue repetition.
6. Closing remarks. The presiding officer shall announce the location where the written public comments are to be sent and the date and time of the close of record.

R4-19-705. Petition for Delayed Effective Date

- A. A written petition to delay the effective date of the rule, pursuant to A.R.S. § 41-1032, shall be filed with the Board. The petition shall contain:
 1. The name and current address of the person submitting the petition;
 2. Identification of the proposed rule;
 3. The need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date; and
 4. The signature of the person submitting the petition.
- B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

R4-19-706. Written Criticism of Rule

- A. Any person may file a written criticism of an existing rule with the Board.
- B. The criticism shall clearly identify the rule addressed and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise considered to be improper.
- C. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board pursuant to A.R.S. § 41-1056.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

R18-2-603
Article 15
R18-2-1501
R18-2-1502
R18-2-1503
R18-2-1504

Rulemaking Action

Repeal
New Article
New Section
New Section
New Section
New Section

Notices of Final Rulemaking

R18-2-1505	New Section
R18-2-1506	New Section
R18-2-1507	New Section
R18-2-1508	New Section
R18-2-1509	New Section
R18-2-1510	New Section
R18-2-1511	New Section
R18-2-1512	New Section
R18-2-1513	New Section
R18-2-1514	New Section
R18-2-1515	New Section

2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: A.R.S. §§ 49-104(A)(11) and 49-425

Implementing statute: A.R.S. § 49-501

3. The effective date of the rules:

October 8, 1996

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening:

2 A.A.R. 1438, April 12, 1996

Notice of Proposed Rulemaking:

2 A.A.R. 1658, May 10, 1996

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Mark Lewandowski or Martha Seaman, Rule Development Section

Address: Department of Environmental Quality
3033 North Central Avenue
Phoenix, Arizona 85012-2809

Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)

Fax: (602) 207-2251

6. An explanation of the rule, including the agency's reasons for initiating the rule:

Overview

The Department of Environmental Quality (ADEQ) has adopted rules that structure the smoke management process for prescribed forestry and rangeland burns. Prescribed burning is conducted by federal and state land managers (F/SLMs) for many purposes, including the prevention of wildfires and the associated degradation of air quality.

Prescribed burning of forest and range lands has been defined by the U.S. Environmental Protection Agency (EPA) as: "The controlled application of fire to wildland fuels in either a natural or modified state, under specific environmental conditions which allow the fire to be confined to a predetermined area and at the same time produce the intensity required to attain planned resource management objectives."

The rules will assist ADEQ and the F/SLMs to manage prescribed burns so that the smoke from multiple burns, or the smoke from a single burn under adverse conditions, does not impact the health of persons living near the burn and does not impact visibility in smoke-sensitive areas, such as federal Class I wilderness areas. These benefits are further described in the Economic Impact Statement.

The EPA has provided guidance on developing a prescribed burning program that achieves the above goals and that constitutes Best Available Control Measures (BACM). It is the intent of ADEQ to have a BACM-level program. As stated in the EPA's Prescribed Burning Technical Information Document (OAQPS, September 1992, EPA 450/2-92-003):

"The specific steps employed by a State to achieve these objectives constitute the state's 'smoke management plan.' The following are characteristic elements of a more developed smoke management plan:

1. Registration of acres to be burned in the coming year.
2. Designation of burn/no burn days based on a number of specific meteorological factors.
3. Allocation procedures to determine how many and which acres will be burned on a given day.
4. The specific emission reduction techniques to be used."

The rules follow this outline generally, and follow many of the specific suggestions contained in the EPA guidance. ADEQ has had Burn Guidelines ("Interim Operations Guidance for Smoke Management in Arizona", ADEQ 1991) in place for several years.

Notices of Final Rulemaking

These Guidelines were created jointly between ADEQ and the affected F/SLMs, and they also track the EPA guidance. Each of the F/SLMs in Arizona has complied with the ADEQ Burn Guidelines since the time of their creation. Most of the provisions in today's rules are codifications of the practices currently followed under the Guidelines and under Arizona's previous rule (R18-2-603). However, because guidelines can only invite voluntary participation and because the smoke management program has been successful in reducing the effects of air pollution, ADEQ is today making the program mandatory and is placing it in rule. Section 101 of the federal Clean Air Act Amendments of 1990 directs states to take responsibility for air pollution control, with the assistance of the federal agencies. Many of the F/SLMs in Arizona were consulted during the drafting of the rules.

Please note that agricultural burns are not governed by today's final rule. Agricultural burning in Arizona, unlike in other states, is controlled through a permitting program under 18 A.A.C. 2, Article 6.

Purposes of Prescribed Forestry Burning Programs

Most prescribed burns are thought of as those that occur from planned management ignitions to achieve a particular objective. The term "prescribed burn", however, is also applied to burns that occur as a result of natural ignitions (for example, from a lightning strike) if the resulting fire is allowed to burn under pre-identified conditions and an approved burn plan to maintain the natural role of fire in the environment.

Prescribed burns may be applied to native or planted domesticated vegetation or to activity-created fuels. Vegetation may be burned to eliminate existing dominant species (stand replacement), control invaded weeds and brush species, maintain the current stand (underburning), or reduce the natural build-up of hazardous fuels. Activity-created fuel is the residue left after a management activity such as timber or crop harvest, or land clearing, has taken place.

Prescribed fire is used to achieve a number of objectives. Among the most cited for wildlands are:

- hazard reduction
- site preparation
- wildlife habitat improvement
- range improvement
- disease and insect control
- ecosystem maintenance

Other objectives cited across the country include managing endangered species, managing competing vegetation, improving aesthetics, improving access, and recycling nutrients. The following paragraphs discuss several of the major objectives of prescribed burning across the country.

Hazard Reduction

In wildlands, fuels can accumulate in amounts sufficient to pose a serious wildfire threat if they are not removed. (A discussion of the various types of forests and their capacity for fuel accumulation can be found in the Arizona Comparative Environmental Risk Project, ADEQ 1995.) Fuels may accumulate naturally or be the result of human activity, such as timber harvesting. Prescribed fire is 1 method of removing the accumulated fuel. By removing available fuels, prescribed fire can reduce the damage to an area in which a wildfire occurs and reduce the associated air quality impacts. In addition, by creating "breaks" in fuel continuity, prescribed fire allows for easier control of a wildfire.

Site Preparation

On some wildlands, the site needs to be prepared for regeneration after harvest. Regeneration may occur through seeding, planting, or natural regeneration. For each method, fire can be used to make regeneration easier.

Wildlife Habitat Improvement

Prescribed fire is used to reduce undesirable plant species, encourage desirable habitat by changing plant composition, reduce vegetation growth, and manage critical habitats. Prescribed fire is used to develop areas for wildlife species to browse, nest, forage, etc. On rangelands, species diversity is promoted through use of firing techniques to create a mosaic pattern on the landscape that encourages different stages of growth from range species.

Range (Forage) Improvement

In wildlands and range lands used for forage crops, prescribed burns can increase the availability, palatability, quality, and quantity of grasses and forage material for livestock as well as for wildlife species.

Disease and Insect Control

Under very controlled conditions in wildlands, prescribed burning can be used to control various diseases and insects without destroying the stand.

Ecosystem Maintenance

In many of North America's ecosystems, "natural" fire is a significant ecological process. Many plants have structural adaptations, specialized tissue, or reproductive features that favor them over other species in a fire-dominated environment. The removal or alteration of "natural" fire patterns (for example, from the attempt to exclude fire) in these ecosystems can significantly change the make-up of the ecosystem. Prescribed burning is used in some areas to maintain these fire-tolerant or fire-dependent species.

Notices of Final Rulemaking

Air Emissions

The burning of wildland biomass releases a variety of pollutants into the atmosphere. The predominant emissions are carbon dioxide, carbon monoxide, hydrocarbons, and particulate matter, with particulate matter having the greatest impact. Because the wood or vegetative matter contain other elements, prescribed burning and wildfires also release other chemical compounds, including toxics, into the atmosphere, though usually in significantly smaller quantities.

"PM10" stands for particulate matter that is smaller than 10 microns. PM10 is an air pollutant that is inhaled and often trapped in the lungs. Preventing excess PM10 emissions (from wildfires and from multiple prescribed burns) is an important goal of the rules. The rules recommend management practices that will lessen these PM10 emissions (see R18-2-1509).

Most PM10 emissions are generated during the flaming and smoldering stages. Generally, emission rates during the smoldering phase are higher, sometimes significantly higher, than those during the flaming phase. These rules take continued smoldering into account as part of the entire smoke management process.

Weather and Smoke Dispersion

Weather categorization models for prescribed burning programs are based on an assessment of the dispersion capabilities of the atmosphere. The rules use a weather categorization model. Poor dispersion limits the amount of burning because under this condition, smoke can accumulate in quantities sufficient to violate ambient air quality standards or other criteria. Sufficiently poor dispersion can result in the disapproval of burn requests. Good or favorable dispersion allows prescribed burning to occur without endangering ambient air quality standards, if the amount of prescribed burning does not "overload" the ability of the atmosphere to disperse the emissions. Thus, even under favorable dispersion conditions, the quantity and location of burning needs to be assessed.

The capability of the atmosphere to disperse smoke from prescribed fires tends to be related to 3 primary factors: atmospheric stability, mixing height, and transport wind speed. These rules incorporate consideration of these factors.

By using the results of a smoke dispersion evaluation, ADEQ can gauge the capacity of the atmosphere on any given day to disperse smoke from prescribed burns so as to avoid violations of the National Ambient Air Quality Standards (NAAQS) for PM10 and to avoid health and environmental impacts. To ensure that this capacity is not exceeded, ADEQ must have a procedural framework that allows it to identify how much burning is planned and where it is proposed to occur. This information allows ADEQ to make decisions as to which burns should proceed on any given day.

Description of Rule, Section-by-Section

ADEQ's rule contains the following Sections:

R18-2-603. (Reserved) -- Repealed existing rule.

R18-2-1501. Definitions -- Contains definitions.

R18-2-1502. Applicability -- Limits applicability of the rules to state and federal land managers.

R18-2-1503. Annual Registration for Prescribed Burns -- Requires land managers to register all planned prescribed burns by August of each year.

R18-2-1504. Burn Plan Contents -- Requires the details of each burn to be supplied to ADEQ 2 weeks before requesting permission to ignite.

R18-2-1505. Burn Requests and Authorization -- Requires permission to burn each day of the burn and requires ADEQ's response.

R18-2-1506. Smoke Dispersion Evaluation -- Describes how ADEQ will make the determinations of how much burning to allow.

R18-2-1507. Burn Accomplishment; ADEQ Recordkeeping -- Requires that the F/SLMs report the number of acres burned; requires ADEQ to maintain a database of that information.

R18-2-1508. Prescribed Natural Fires; Plan; Authorization; Monitoring; Inter-agency Consultation -- Sets the procedures for prescribed natural fires, which are different from the procedures for other prescribed burns.

R18-2-1509. Emission Reduction Techniques; BMP -- Lists the control measures known as BMP (best management practices) for increasing efficiency and reducing air emissions.

R18-2-1510. Monitoring -- Describes mandatory and permissive monitoring of burns.

R18-2-1511. Burner Qualifications -- Requires burns to be conducted by trained personnel.

R18-2-1512. Public Awareness Program -- Describes public education and outreach efforts.

R18-2-1513. Surveillance and Enforcement -- Describes actions that ADEQ may take regarding enforcement.

R18-2-1514. Oversight -- Mandates a report on the F/SLMs' costs and emissions for the previous year's burns.

R18-2-1515. Forms; Electronic Copies; Information Transfers -- Allows for computer, facsimile, and Internet transfers

Arizona Administrative Register
Notices of Final Rulemaking

of information between ADEQ and F/SLMs.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.

8. The summary of the economic, small business, and consumer impact:
Identification of the Rulemaking

Prescribed Forestry Burning, 18 A.A.C. 2, new Article 15, and repeal of R18-2-603.

A Summary of the Information Included in the Economic, Small Business, and Consumer Impact Statement

(Please note that the entire Economic, Small Business, and Consumer Impact Statement is included here. No further materials are included in the rulemaking docket.)

These rules manage prescribed burns so that the smoke from multiple burns, or the smoke from a single burn under adverse conditions, does not impact the health of persons living near the burn and does not impact visibility in any smoke-sensitive areas, such as federal Class I wilderness areas.

As discussed above in this Preamble, ADEQ has had prescribed forestry burning guidelines ("Interim Operations Guidance for Smoke Management in Arizona", ADEQ 1991) in place for several years. These Guidelines were created jointly between ADEQ and the affected entities, each of whom has complied with the Guidelines since their creation. Most of the provisions in today's rules are codifications of the practices currently being followed under the Guidelines; therefore, the rule creates few new economic impacts. The incremental costs or reduced costs that are created are described below.

The entities affected by the rulemaking are as follows:

- (a) United States Forest Service.
- (b) United States Fish and Wildlife Service.
- (c) National Park Service.
- (d) Bureau of Land Management.
- (e) Bureau of Reclamation.
- (f) Department of Defense.
- (g) Bureau of Indian Affairs.
- (h) United States Soil Conservation Service.
- (i) Arizona State Land Department.
- (j) Arizona State Parks Department.

The U.S. Forest Service and the Bureau of Indian Affairs are, by far, the largest users of prescribed forestry burning. There are also, occasionally, private individuals who wish to conduct large-scale forestry or rangeland burning, who ask to be assisted by 1 of the federal or state land managers (F/SLMs) listed above. The private individual and the F/SLM then jointly follow smoke management procedures and share the costs.

Please note, also, that Indian tribes are invited to participate in state-wide smoke management practices, but the state has no jurisdiction over tribal lands and the rules cannot and do not mandate their participation. Therefore, any costs or benefits to Indian tribes in Arizona are not described in this document. The same is true for any private land manager, such as the Nature Conservancy, that has historically coordinated its prescribed burning with ADEQ although neither the current rules nor the ADEQ Burn Guidelines mandate this participation.

The following chart represents the total number of acres involved in prescribed forestry and rangeland burns in Arizona for the 1995 annual burn cycle, as well as the total emissions of particulate matter that were associated with those burns:

Total Acres Requested	Total Acres Approved	Total Acres Burned	Total PM10 Emissions (lbs)	Average Size Burned (acres)
325,257	295,665	104,261.5	28,994,473	52.76

The fuel types burned in 1995 were as follows: Timber 54%, grass 21%, piled slash 15%, and brush 10%.

Total emissions are determined by multiplying the tons of fuel burned (known as an "activity level") by an emission factor. This is done for each burn and the results summed to obtain estimates of PM10 emissions from prescribed burning. (Currently, the most readily available source of emission factors is provided in the U.S. EPA's publication Compilation of Air Pollutant Emission Factors, AP-42, Fourth Edition (AP-42), September 1985, Section 11.1. However, ADEQ and Arizona's F/SLMs are cooperating to research and verify more refined emission factors for Arizona, partly using the database of information that will be created as a result of these rules. There is some evidence that Arizona emission factors may be lower than those in other states, because of the types and conditions of fuels.)

Benefits

As can be seen from the above chart, prescribed forestry and rangeland burning in Arizona accounted for more than 14,000 tons of particulate matter being added to the air during the 1995 burn cycle. This managed burning prevented uncontrolled wildfires that would have impacted air quality to a much greater extent. Prescribed burning creates physical barriers beyond which a wildfire cannot pass and reduces the fuel available to a wildfire in a given area. Although entities such as the Grand Canyon Visibility Transport Commission have sought to establish the exact correlation between the number of acres burned and the number of wildfire acres (or amount of emissions) prevented, no direct correlation is possible because of the large number of variables involved (weather, wind speed, terrain, fuel type, etc.).

Most particulate emissions from prescribed burning (more than 90%) are less than 10 microns in diameter (PM10). This size particulate is considered to pose particular health concerns because PM10 is small enough to enter and remain in the human respiratory system. More than 80% of the particulate matter is smaller than 2.5 microns, which is even more susceptible to being inhaled. This risk is recognized by the general public. People surveyed for the Arizona Comparative Environmental Risk Project ranked the air they breathed outdoors to be their 4th highest concern out of 20 environmental issues (ACERP, ADEQ 1995).

Adverse health effects result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and because the affected individual may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort, or inconvenience (pain and suffering), anxiety about the future, and concern and inconvenience to family members and others.

The American Lung Association has estimated that a simple cold costs an average of \$12 a day in lost productivity. Missing an entire day of work for respiratory reasons costs an average of \$60 per day in lost productivity. And the average cost of an emergency room visit for an asthma attack is estimated at \$500. The following table, from the American Lung Association study, describes the monetary value of avoiding each of the health effects caused by particulate matter:

American Lung Association, "Dollars and Cents: The Economic and Health Benefits of Potential Particulate Matter Reductions in the United States" (June 1995)

Chapter 5. Monetary Valuation of Human Health Effects

Table 5-3
Summary of Selected Monetary Values for Morbidity Effects
Estimate per Incident (1st Q 95 Dollars)

Morbidity Effect	Low	Central	High	Primary Source	Type of Estimate
Adult chronic bronchitis	\$150,000	\$240,000	\$390,000	Viscusi et al. (1991) Krupnick & Cropper (1992)	WTP

Notices of Final Rulemaking

Respiratory hospital admission	\$7,500	\$15,000	\$22,500	Krupnick & Cropper (1989)	Adjusted COI
Emergency room visit	\$250	\$500	\$750	Rowe et al. (1986)	Adjusted COI
Child bronchitis	\$160	\$320	\$480	Krupnick & Cropper (1989)	Adjusted COI
Restricted activity day	\$30	\$60	\$90	Loehman et al. (1979)	WTP & Adjusted COI
Asthma symptom day	\$13	\$36	\$60	Rowe & Chestnut (1986)	WTP
Acute respiratory symptom day	\$6	\$12	\$17	Loehman et al. (1979); Tolley et al. (1986)	WTP
Selected Probability Weights for All Effects	33.3%	33.4%	33.3%		

WTP = Contingent valuation Willingness-To-Pay estimate.

Adjusted COI = Cost-Of-Illness x 2 to approximate Willingness-to-pay.

The University of Arizona estimates that there are 242,627 asthmatics statewide in Arizona, or 1 out of every 16 people (Leibowitz 1993). (It is believed that the elevated rate is caused by asthmatics who move to Arizona hoping that the climate will improve their disease. Arizona's higher prevalence of asthma also may be attributed to offspring who have a higher predisposition to develop it. ACERP, ADEQ 1995.) In addition, numerous studies have found associations between PM10 pollution and mortality. Many of the studies correlate episodes of extremely high concentrations of particulates with increased mortality. Recent studies have also found correlations between increased PM10 pollution at lower levels and mortality from non-malignant respiratory diseases and cardiopulmonary diseases. While none of the epidemiological studies prove a causal effect, when taken together, the studies indicate a causal association exists, particularly among the elderly and those already suffering from a cardiopulmonary or respiratory disorder, such as asthma. (Studies referenced in ACERP Sec. 3, Chap. 13, ADEQ 1995.)

Mandatory prescribed forestry and rangeland burning rules assist in managing and lessening smoke impacts on the public at the time of the burn. This prevents hospital admissions for asthmatics, children, and the elderly. Managing the air quality impacts of prescribed burning also preserves the aesthetic qualities of the wilderness areas in which visibility is so highly prized. The exact benefits that are a result of this rulemaking are those that exceed the benefits currently enjoyed as a result of voluntary compliance with the ADEQ Burn Guidelines, and these are difficult to quantify further. The following discussion details the incremental costs and benefits to the affected F/SLMs and to ADEQ.

Costs

R18-2-1501. The Definition Section has no economic impacts, in and of itself.

R18-2-1502. The Applicability Section describes the affected entities but has no economic impacts by itself.

R18-2-1503. Annual Registration is currently in place at ADEQ, as a matter of policy, and has been used (as it will continue to be used under the rule) as a tracking method only, so that ADEQ can have a general idea of what burns will occur in the coming 12 months. The registration of prescribed natural fires is the only new element, resulting in a marginal increase in cost for F/SLMs. No details on conducting the burn are required at this point; therefore, the additional new cost is quite small. Subsection (D) allows additional information to be requested by ADEQ in consultation with the F/SLM; it is unknown at this time what more might be needed or discussed, therefore, its impact cannot be quantified.

Subsection (F) allows electronic filing of registration forms in the future (since this is the stated intent of the F/SLMs at this time) and this change could result in lower filing costs.

No F/SLMs will have to hire new or additional staff to comply with this Section. ADEQ, in order to implement the entire rule including this Section, can continue to rely on the U.S. Forest Service personnel currently provided to ADEQ under the Burn Guidelines. Currently, the F/SLMs provide for the staffing of 2 full-time positions, and ADEQ is providing their space and equipment. However, if that arrangement changes, and ADEQ has to bear the entire cost, 2 full-time state employees (an Environmental Program Specialist and an Environmental Health Specialist II) will have to be hired at an estimated cost of \$120,000.

R18-2-1504. The Burn Plan Section is less restrictive than the current ADEQ Burn Guidelines. The Guidelines, as well as current rule R18-2-603, require that each Burn Plan be known, detailed, and submitted in June of each year. The rule does not require a Burn Plan until 14 days before the burn takes place. This reduces the burden on F/SLMs because weather and fuel conditions prevent some burns contained in a Registration from occurring. This allows for greater flexibility in planning.

Unless waived by ADEQ, modeling of potential smoke impacts, based on fuel type, topography, weather, and other factors is required in certain sensitive instances to determine where the health and visibility impacts might occur. Modeling typically involves the use of a computer to estimate the production and transport of smoke. Modeling costs, when required, can cost from 20 cents per acre to \$2 per acre, averaging \$1 per acre in Arizona. Prescribed burns in Arizona tend to cover fewer than 300 acres; in 1995 the average size burn was 52.76 acres. Modeling costs would vary accordingly.

R18-2-1505. The elements of the Daily Burn Request are not new, with the exception of the reporting of wildfires greater than 100 acres. However, this economic impact is expected to be only moderate, because the rule mimics the Wildfire Reporting System currently used by F/SLMs for their own purposes. The information required by the rule is expected to track, for the most part, the information already reported by F/SLMs on Universal Form ICS 209. The only additional information required relates to "projected smoke and air quality impacts" for wildfires. One commenter did state that increased costs could be expected for training personnel in smoke management impacts, although no figures were given.

R18-2-1506. The elements of the Smoke Dispersion Evaluation are not currently contained in the ADEQ Burn Guidelines, but are a matter of current practice. However, the rule would make these current practices mandatory. Therefore, as stated above, to implement the entire rule including this Section, ADEQ can continue to rely on the U.S. Forest Service personnel currently housed at ADEQ or, in the future, could hire 2 full-time state employees at an estimated cost of \$120,000 to implement the program.

R18-2-1507. The Burn Accomplishments are currently produced pursuant to the ADEQ Burn Guidelines. The database of information is already kept by ADEQ. No economic impacts are associated with this Section.

R18-2-1508. The Section on Prescribed Natural Fires is new. ADEQ is not currently approving or disapproving these burns. However, of all the affected entities listed at the beginning of this Economic Impact Statement, only the U.S. Forest Service and the U.S. Park Service are definitely using prescribed natural fires as a management tool at this time, and even these agencies are not using this tool frequently. This is because a prescribed natural fire must have burned-off perimeters or other physical barriers, such as waterways, to be controllable. Although areas are now being burned to create these boundaries, many areas are not yet ready for prescribed natural fires. In addition, federal agencies must find funding for conducting prescribed natural fires, because they are funded separately from wildfires.

Most prescribed burns are fewer than 300 acres, whereas a prescribed natural fire can be more than 1,000 acres. Therefore, prescribed natural fires will eventually become an economical way to resolve heavy fuel problems and prevent wildfires (and their attendant air pollution problems). According to informal estimates by the U.S. Forest Service, prescribed natural fires could increase to being 40% of the burns conducted by the 2 federal agencies using them. The Bureau of Land Management has also expressed interest in using prescribed natural fires. However, the actual use of prescribed natural fires cannot be predicted at this time.

The cost of complying with the Section on Prescribed Natural Fire Plans could be significant, because the F/SLM is asked to determine burn prescription and anticipated emissions, as well as potential smoke impacts. The information must be submitted to ADEQ within 72 hours after the prescribed natural fire is 1st observed. However, whether additional personnel will be needed to comply with this Section will vary from agency to agency, again depending on the agency's use of prescribed natural fires as a forestry health tool.

The Section on Prescribed Natural Fire Plans requires consultation, which is a cost-savings provision. Requiring consultation when an air quality problem develops provides the most practical solution to the problem and will prevent orders to suppress when they are not needed. An order to suppress a large fire can result in costs of \$100,000 per day. Total costs to suppress have been known to reach more than \$1,000,000 per day for extremely large fires, and the risk to human life for the firefighters must also be considered. To date, Arizona has not had this type of difficulty, although neighboring states such as New Mexico have. It is believed that the consultation portion of the rule will prevent unnecessary suppression costs.

Arizona Administrative Register
Notices of Final Rulemaking

R18-2-1509. The Section on Emission Reduction Techniques recites the current best management practices known to state and federal land managers and to the U.S. EPA. These practices are already in effect, to the extent possible, and are also currently recited in the ADEQ Burn Guidelines.

R18-2-1510. The Monitoring Section is also not new to the smoke management practices of Arizona. Monitoring typically involves surface-based measurements for wind, temperature, humidity, and meteorological observations, supplemented in some instances by measurements of upper wind patterns through the use of pilot balloons or test burns. Even the establishment of remote automated weather stations (RAWS) is currently in use. However, it should be noted that consultation will govern the number of times that additional monitoring efforts will be required. Consequently, new or additional impacts on the F/SLM, if any, are difficult to quantify at this time. Monitoring costs are estimated to average \$1 per acre in Arizona. Prescribed burns in Arizona tend to cover fewer than 300 acres; in 1995 the average burn was 52.76 acres. It should be noted that monitoring costs also vary with the conditions of the burn and can become quite high in a situation where the burn threatens to become uncontrolled or where smoke may be reaching populated areas.

R18-2-1511. The requirements for Burner Qualifications are already a matter of current practice. Unlike other portions of this rulemaking, the Burner Qualifications are not contained in the ADEQ Burn Guidelines, but are employed by the F/SLMs for their own purposes. The rule, therefore, imposes no new costs.

R18-2-1512. The Public Awareness Program is not contained in current ADEQ rule or guideline. However, some F/SLMs currently engage in public education and outreach as part of achieving their own objectives. Because the Section makes the education program permissive, rather than mandatory, the cost to ADEQ may be zero or it may involve the time of 1 or more staff people (in conjunction with F/SLM staff people) in giving presentations. No new employees will be hired by ADEQ to implement this Section, and it is unlikely that any F/SLM will hire additional employees because of this Section. If ADEQ chooses to implement the education program, it may incur minimal costs for renting meeting rooms in which to make presentations or to produce brochures jointly with the F/SLMs.

R18-2-1513. The Surveillance and Enforcement Section is both new and permissive. Therefore, the economic impacts are difficult to assess. It is ADEQ's intent to become more active in the surveillance of prescribed forestry burns; however no new full-time employees are planned to be hired. ADEQ is considering hiring 1 half-time employee to devote to the smoke management program, at a cost of under \$40,000.

An F/SLM who violates the rules may be subject to civil penalties or the costs of containment or mop-up. However, the rule does not change the effect of current law. A violation of current rule R18-2-603 carries the same potential civil penalty and A.R.S. § 49-462 already allows ADEQ to seek legal restraint of any person who is "creating an imminent and substantial endangerment to the public health or the environment because of a release of a harmful air contaminant . . ."

R18-2-1514. The Oversight Section partly recites the report currently described in R18-2-603, but expands on the report by seeking information associated with actual burns. There will be a significant cost to F/SLMs in preparing this report, depending on the level of detail that is achieved. In response to comment, ADEQ will make every effort to make the report both useful and easy to file. There will be several benefits associated with this same increase of effort -- the F/SLM will be able to use the information to conduct a prescribed burning program in a more cost-effective manner and ADEQ will be able to refine its rules by eliminating requirements that have not resulted in improved air quality. Both of these benefits (improved use of taxpayer dollars and improved air quality) accrue to the general public.

R18-2-1515. The economic impacts of the Section on Information Transfers are unknown at this time. Forms are currently provided on both paper and computer disk. It is anticipated that electronic data transfer will eventually save money for both ADEQ and the F/SLMs, but the relationship between the cost of computer hardware and software to the cost savings in time is difficult to assess. "Time" in this context does not refer to time saved in the preparation of documents (although this may be beneficial, also) but refers to more prompt approvals and disapprovals of burns by ADEQ, so that the F/SLM can take advantage of prime burning conditions.

In conclusion, the incremental costs associated with this rule are generally low and the air quality benefits are generally high. Also, in response to A.R.S. § 41-1055, the following statements apply: There are no economic impacts on political subdivisions. There are no economic impacts on private businesses, their revenues or expenditures. Possible employment of new persons has been discussed above, in context. There are no economic impacts on small businesses. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above. There is no impact on state revenues, as no fees are charged in the smoke management program. There are no other, less costly alternatives for achieving the total goals of this rulemaking; however, in each Section that provides additional information or assistance may be obtained from the F/SLM, the information is requested following consultation with the affected agency to avoid unreasonable or highly expensive demands by ADEQ.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
(This description also includes a summary of the principal comments and the agency response to them.)

R18-2-1501. Definitions

- I. ADEQ, on its own initiative, has clarified an error in the proposed rule. The definition of "smoke management unit" referred to the map of eleven air-sheds on file at ADEQ. The map was not also intended to be published as part of the rule text. Therefore, the reference to "Appendix 1 of this Article" was incorrect and has been removed.

The proposed rule read as follows:

Arizona Administrative Register
Notices of Final Rulemaking

"17. 'Smoke management unit' means any 1 of eleven geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outlines are determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into eleven smoke management units is on file with ADEQ and is included in Appendix 1 of this Article."

The adopted rule reads as follows:

"17. 'Smoke management unit' means any ~~one~~ of 11 geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outlines are determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into 11 smoke management units is on file with ADEQ ~~and is included in Appendix 1 of this Article.~~"

- II. A related comment was made, asking whether there were acreage caps associated with each of the eleven air-sheds.

ADEQ has not inserted caps into the adopted rule, and is instead relying on case-by-case determinations made under the rule's list of criteria to decide whether air quality will be adversely affected by allowing an individual burn. Acreage caps restricting burning by air-shed were originally envisioned by the ADEQ Burn Guidelines of 1991, but the wide variety of fuels, as well as other varying factors such as terrain and meteorology, made the use of such caps difficult. Rather than risk hard caps resulting in arbitrary and capricious determinations, ADEQ has declined to place caps into the current rule.

No change to the rule.

R18-2-1502. Applicability

- I. Several comments were received requesting that the rules apply to agricultural burning, as well as forestry and rangeland burning by state and federal agencies. The issue of equity was raised, asking that all burning be treated equally stringently. The point was also made that placing agricultural burns in the same smoke management database would assist ADEQ in making better decisions in allowing or preventing burning.

ADEQ is addressing the permitting of agricultural burning as a separate rulemaking, revising Title 18, Chapter 2, Article 6 of the Arizona Administrative Code, and through various State Implementation Plans (SIPs) such as the SIP for the Yuma PM10 non-attainment area. ADEQ is sensitive to the equity and database issues and will bear them in mind as these documents are formulated.

No change to the rule.

- II. A comment was made asking that the rule be broadened to include a prohibition on logging of larger trees and the thinning of smaller trees, and also that the rule be broadened to reduce grazing by cattle in fire-prone areas.

Both of these areas are beyond the jurisdiction of ADEQ, and therefore cannot be accommodated in this rulemaking.

No change to the rule.

R18-2-1504. Burn Plan Contents

- I. Several comments were received in response to ADEQ's request for information on the appropriate size of burn for which modeling or monitoring would be required. There was some agreement that 250 acres, or 50 acres near a smoke-sensitive area, was the correct figure but that it should be clarified to mean "acres per day". Other commenters asked that the acreage be deleted and replaced by fuel considerations, such as fuel type, arrangement, and amount. The comments apply equally to R18-2-1504(A)(6), R18-2-1505(A)(2), and R18-2-1510(B).

ADEQ has retained the acreage limits and has added the phrase "per day" in each of the cited rules. The waiver language was retained to allow ADEQ to consider fuel type and other complexities.

As an example, R18-2-1504(A)(6) was proposed as follows:

"6. Modeling of smoke impacts for burns greater than 250 acres in size, or greater than 50 acres in size if the burn is within 15 miles of a Class I Area, a PM non-attainment area, a carbon monoxide non-attainment area, or other smoke-sensitive area. Air quality modeling for these areas is mandatory unless waived either verbally or in writing by ADEQ. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling."

The adopted rule reads as follows:

"6. Modeling of smoke impacts for burns greater than 250 acres ~~in size per day~~, or greater than 50 acres ~~in size per day~~ if the burn is within 15 miles of a Class I Area, a PM non-attainment area, a carbon monoxide non-attainment area, or other smoke-sensitive area. Air quality modeling for these areas is mandatory unless waived either verbally or in writing by ADEQ. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling."

- II. A comment was received stating that automobiles and utilities are the largest cause of pollution in carbon monoxide non-attainment areas. The commenter asked that ADEQ address this problem, rather than preventing prescribed burns that could be beneficial to the environment, simply because the burn is within 15 miles of the non-attainment area.

ADEQ is addressing automobile and utility pollution through each of the State Implementation Plans (SIPs) for the non-attainment areas. It is hoped that the SIPs, together with this adopted rule, will reduce air pollution, both in the non-attainment areas and in the Class I areas.

Arizona Administrative Register
Notices of Final Rulemaking

No change to the rule.

- III. ADEQ, on its own initiative, clarified R18-2-1504(A)(7) to require the name of the official submitting the Burn Plan, rather than the signature of the official, so that it is clear that Burn Plans can be submitted in electronic or digital format, as well as paper format.

The proposed rule read as follows:

- "7. The signature of the official submitting the Burn Plan on behalf of the F/SLM. Either a written signature or an electronic signature shall be acceptable."

The adopted rule reads as follows:

- "7. The ~~signature name~~ of the official submitting the Burn Plan on behalf of the F/SLM. ~~Either a written signature or an electronic signature shall be acceptable.~~"

R18-2-1505. Burn Requests and Authorization

- I. Several comments requested that Burn Requests not responded to by ADEQ in a timely fashion be deemed approved, so that the burn could proceed.

ADEQ is committed to providing staff coverage so that Burn Requests do not go unattended to. In order to accommodate this request, the rule has been changed to state that either the a Burn Approval Request decision or else a confirmation that the Burn Request was received by ADEQ be communicated to the F/SLM by 10 p.m. If neither of these communications is transmitted by ADEQ by that time, the burn will be deemed approved and can proceed.

The proposed rule read as follows:

- "D. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal. ADEQ may communicate its decision by verbal, written or electronic means, although a written or electronic reply shall be provided by ADEQ if requested by the F/SLM."

- E. An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ."

The adopted rule reads as follows:

- "D. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal. ADEQ may communicate its decision by verbal, written, or electronic means, ~~although ADEQ shall provide a written or electronic reply shall be provided by ADEQ if requested by the F/SLM. If ADEQ does not communicate its decision, or a confirmation that the Burn Request was received, by 10 p.m., the burn is deemed approved.~~

- E. Except as provided in subsection (D), an F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ."

- II. Several comments were received in response to ADEQ's query about Universal Form ICS 209 and whether it would contain all the wildfire information needed under the rule. The commenters stated that this national form did not have all the information required under the proposed ADEQ rule, but that it could not and should not be changed for just 1 state. One commenter added that "approved suppression strategy" be included in the information obtained by ADEQ.

ADEQ agrees with the commenters regarding form ICS 209 and will not request that it be changed. Instead, to limit the impact of the ADEQ rule, 2 changes were made to the text. First, "potential" was replaced with "projected" to limit the scope of the information required. Second, information on the projected smoke impacts and on estimated control size will only be provided to ADEQ upon request, rather than in all cases. For those F/SLMs who wish to provide suppression strategies, "projected" impacts will cover this topic.

The proposed rule read as follows:

- "H. All wildfires greater than 100 acres in size shall be reported on a daily basis to ADEQ by the F/SLM in whose jurisdiction the wildfire occurs. The report shall include location, estimated control date, estimated control size, and potential smoke and air quality impacts."

The adopted rule reads as follows:

- "H. All wildfires greater than 100 acres ~~in size~~ shall be reported on a daily basis to ADEQ by the F/SLM in whose jurisdiction the wildfire occurs. The ~~report~~ F/SLM shall include location, estimated control date, and estimated ~~control incident~~ size. ~~and The F/SLM shall provide information on potential projected smoke and air quality impacts and on estimated control size upon request by ADEQ.~~"

- III. A comment was made requesting that information be reported on the amount of ~~active~~ burn acres for wildfires, rather than the total number of acres.

ADEQ declines to change the rule in response to this comment, since Universal Form ICS 209 does not distinguish between these 2 categories.

No change to the rule.

Notices of Final Rulemaking

- IV. A comment was made asking whether the rule was clear regarding the fact that ADEQ cannot order suppression of a wildfire. The commenter also asked, since wildfires cannot be ordered suppressed by ADEQ, how space in the air-shed would be created by ADEQ to accommodate those wildfires.

ADEQ believes that the rule is clear on the point that ADEQ cannot order suppression of wildfires, since that power is nowhere delineated in the rule. To create space in the air-shed when a wildfire is burning, ADEQ will continue to judiciously restrict the use of prescribed burns during the time and in the area of wildfires.

No change to the rule.

R18-2-1508. Prescribed Natural Fires; Plan; Authorization; Monitoring; Inter-agency Consultation

- I. A comment was received asking that, when weather conditions permit, some fires be allowed to burn to renew the forest and prevent fuel build-up.

The adopted rule, R18-2-1508, allows and regulates such natural fires for the 1st time, to accommodate the concerns raised by the commenter.

No change to the rule.

R18-2-1509. Emission Reduction Techniques; Best Management Practices (BMP)

- I. A comment was received encouraging the use of prescribed burns, but noting that they should be conducted during cool weather.

ADEQ has provided a window from March to September in the rule as a best management practice, to encourage some burning during the season of good smoke dispersion. However, burning during other seasons is not prohibited. ADEQ notes that few burns are conducted in the winter in certain parts of Arizona due to the heavy precipitation.

No change to the rule.

- II. A comment was raised stating that the BMP encouraged slash burning which sterilizes the soil, rather than cool, slow burning which is more beneficial to the environment.

The adopted rule, in paragraphs 9, 13, and 14 encourage methods other than slash pile burning. It is ADEQ's hope that state and federal land managers will examine the BMP as a whole, and continue to use slash pile burning judiciously. The BMP are meant to provide balanced choices, rather than insisting on only 1 practice.

No change to the rule.

- III. Some small grammatical changes were made to the rule for clarity.

R18-2-1510. Monitoring

- I. A comment was received asking that, in order to make the modeling and monitoring requirements similar and to allow ADEQ to consider fuel type and amount, that the acreage sizes be deleted.

ADEQ instead has added language to R18-2-1510 that mimics R18-2-1504. The language makes it clear that even required monitoring can be waived by ADEQ, since it might be unnecessary or unduly expensive in some situations.

The proposed rule read as follows:

- "B. The following types of monitoring shall be required for burns greater than 250 acres in size, or greater than 50 acres in size if the burn is within 15 miles of a Class I Area, a PM non-attainment area, a carbon monoxide non-attainment area, or other smoke-sensitive area:

1. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, or stability.
2. Smoke plume measurements, using a format supplied by ADEQ."

The adopted rule reads as follows:

- "B. The following types of monitoring shall be required, unless waived by ADEQ, for burns greater than 250 acres ~~in size~~ per day, or greater than 50 acres ~~in size~~ per day if the burn is within 15 miles of a Class I Area, a PM non-attainment area, a carbon monoxide non-attainment area, or other smoke-sensitive area:

1. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, or stability.
2. Smoke plume measurements, using a format supplied by ADEQ."

R18-2-1512. Public Awareness Program

- I. A comment was received stating that the Public Awareness Program should be mandatory and that ADEQ and others should be willing to fund it. The rationale given was that further public awareness helps to create acceptance of the prescribed forestry burning program. A related comment was made that citizen groups should not be excluded from assisting with the Public Awareness Program.

Notices of Final Rulemaking

Although ADEQ is strongly supportive of public education on this topic, ADEQ has declined to make the program mandatory on itself or on other state or federal agencies, since it is difficult if not impossible for a rule to create the assurance of funding. The rule has been changed grammatically to make it clear that it is only permissive. However, ADEQ agrees that citizen groups are often helpful in educating the public and answering their questions, and has changed the rule to allow their participation.

The proposed rule read as follows:

"At the Director's discretion, a public education and awareness program may be initiated to inform the general public of the smoke management program described by this Article. The program shall address smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems. The program shall be initiated by ADEQ in cooperation with federal and state land managers."

The adopted rule reads as follows:

"At the Director's discretion, a public education and awareness program may be initiated to inform the general public of the smoke management program described by this Article. If initiated, the program, which shall be conducted by ADEQ in cooperation with F/SLMs and other interested parties, shall address smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems. The program shall be initiated by ADEQ in cooperation with federal and state land managers."

R18-2-1514. Oversight

- I. One commenter stated that the cost estimation procedures for each project be developed in coordination with the F/SLMs to ensure that the task can be completed without excessive analysis and reporting.

ADEQ is committed to making the report required by R18-2-1514(B) as easy to complete as possible, but does not have the resources to develop cost estimation procedures. The rule is mutually beneficial, since ADEQ obtains needed information about the rules and their implementation, while it is hoped that F/SLMs will obtain information that will assist them in saving money in the future.

No change to the rule.

Clarity, conciseness and understandability

Numerous changes were made in each Section to improve this rule's clarity, conciseness and understandability. A complete description of these changes is contained in the Concise Explanatory Statement (CES) for this rule. The CES is available from ADEQ.

10. A summary of the principal comments and the agency response to them:

The principal comments and the agency response to them are summarized in Section 9 along with the description of the changes. Please see Section 9 above.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

Not applicable.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

**ARTICLE 6. EMISSIONS FROM EXISTING AND NEW
NONPOINT SOURCES**

R18-2-603. ~~Forestry management~~ Reserved

**ARTICLE 15. FOREST AND RANGE MANAGEMENT
BURNS**

- R18-2-1501. Definitions
- R18-2-1502. Applicability
- R18-2-1503. Annual Registration for Prescribed Burns
- R18-2-1504. Burn Plan Contents
- R18-2-1505. Burn Requests and Authorization
- R18-2-1506. Smoke Dispersion Evaluation
- R18-2-1507. Burn Accomplishment; ADEQ Recordkeeping
- R18-2-1508. Prescribed Natural Fires; Plan; Authorization; Moni-

- toring; Inter-agency Consultation
- R18-2-1509. Emission Reduction Techniques; BMP
- R18-2-1510. Monitoring
- R18-2-1511. Burner Qualifications
- R18-2-1512. Public Awareness Program
- R18-2-1513. Surveillance and Enforcement
- R18-2-1514. Oversight
- R18-2-1515. Forms; Electronic Copies; Information Transfers

**ARTICLE 6. EMISSIONS FROM EXISTING AND NEW
NONPOINT SOURCES**

- ~~R18-2-603. Forestry Management~~ Reserved
- A. ~~All national parks and national forests having areas which extend into more than 1 county of the state of Arizona, as well~~

Arizona Administrative Register
Notices of Final Rulemaking

all state parks and forests shall be under the jurisdiction of the Director in all matters relating to prescribed burning or slash disposal.

B. Each entity mentioned in subsection (A) shall comply with the following:

1. Each national park, state park, national forest, or state forest hereinafter called forest will apply directly to the Bureau for an annual burning permit for all planned burning projects. Application will be made in the spring of the year, prior to June 1 for the ensuing fiscal year.
2. The application shall be in the form of a letter listing all projects. Enclosed with the letter will be copies of the Park Service or Forest Service approved burning plans for each planned project. A map of the burn and immediate surrounding area must accompany each plan.
3. The application and the Park Service or Forest Service plans will list the following:
 - a. Approximate date the project will start;
 - b. Location of project by sections, townships, or ranges;
 - c. Approximate elevation of project;
 - d. Aspect of any slopes;
 - e. Description of fuel to be burned;
 - f. Prescribed conditions for fire (for example, time of day, fuel moisture, weather).
4. Each forest as part of the application will provide the Bureau with 1 emergency or 24-hour telephone number.
5. Each forest will notify the Bureau when a project planned starting date is later changed. Notification will be by telephone. Any other changes, such as fuel type, duration of burn or location, should be included in this notification.
6. The determination to allow burning will be made on a day-by-day basis. It is the responsibility of each park or forest to telephone the Bureau for such a determination. Large fires and those that continue during nighttime hours will require special forecasts made by the national weather service, the Department's meteorologist, or by the permittee if forecast procedures are approved by the Department. On-site meteorological measurements by the permittee may be required as inputs to dispersion forecasts and smoke management during the burn.
7. Once each year, on or before December 31, the Forest Service or Parks Service shall submit to the Bureau a report outlining the progress of research and development concerning the effects of forest burn programs on air quality. Such report shall include, where applicable, innovations in the management of prescribed burning using meteorological data, as well as special burning methods, or innovative equipment. Alternatives to burning shall also be considered. Research as to cost effectiveness of the various methods should also be included.
4. "Burn project" means an active or planned prescribed burn, including a prescribed natural fire.
5. "Class I Area" means a mandatory area designated pursuant to Section 169A of the Clean Air Act Amendments of 1990.
6. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
7. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
 - a. United States Forest Service,
 - b. United States Fish and Wildlife Service,
 - c. National Park Service,
 - d. Bureau of Land Management,
 - e. Bureau of Reclamation,
 - f. Department of Defense,
 - g. Bureau of Indian Affairs, and
 - h. United States Soil Conservation Service.
8. "F/SLM" means a federal land manager or a state land manager.
9. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
10. "Mop-up" means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.
11. "National Wildfire Coordinating Group" means the national inter-agency group of federal and state land managers that shares similar wildfire suppression programs and that has established standardized inter-agency training courses and qualifications for fire management positions.
12. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
13. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn prescription conditions and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning includes a fire set or permitted by a public officer to provide instruction in fire fighting methods. A prescribed fire may be ignited either by a trained fire specialist or by natural causes such as lightning.
14. "Prescribed Fire Manager" means a person designated by a F/SLM as responsible for prescribed burning for that land manager.
15. "Prescribed natural fire" means a wildland fire that is ignited by natural causes such as lightning rather than by a trained fire specialist, that is subsequently allowed to continue burning using the same controls and for the same planned resource management objectives as prescribed burning.
16. "Smoke management prescription" means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
17. "Smoke management unit" means any of 11 geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outlines are determined

**ARTICLE 15. FOREST AND RANGE MANAGEMENT
BURNS**

R18-2-1501. Definitions

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

1. "ADEQ" means the Department of Environmental Quality.
2. "BMP" means best management practices as described in R18-2-1509.
3. "Burn prescription" means, with regard to a burn project, the pre-determined area, intensity of heat, and rate of spread required to attain planned resource management objectives.

by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into 11 smoke management units is on file with ADEQ.

18. "State land manager (SLM)" means any department, agency, or political subdivision of the state government that is responsible for wildland management.
19. "Wildfire" means a wildland fire that does not meet resource management objectives and that may threaten life, property, public health, or the ecosystem.
20. "Wildland" means an area in which development is essentially non-existent, except for pipelines, power lines, roads, railroads, or other transportation or conveyance facilities.

R18-2-1502. Applicability

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally-managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- C. Notwithstanding subsection (B), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.

R18-2-1503. Annual Registration for Prescribed Burns

- A. Each F/SLM shall register with ADEQ, on a form prescribed by ADEQ, all planned burn projects, including areas considered for potential prescribed natural fires, for the following year.
- B. A F/SLM shall provide the following information on the registration form:
 1. The F/SLM's name, address, and business telephone number;
 2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than 1 F/SLM or Indian tribe;
 3. All burn projects and potential prescribed natural fire areas planned for the next year; and
 4. All burn projects that were completed during the previous year.
- C. Each planned year extends from August 1 of the registration year to July 31 of the following year. Each F/SLM shall use best efforts to register before August 1 of each year.
- D. After consultation with the F/SLM, ADEQ may request additional information related to tracking burn projects.
- E. A F/SLM may amend a registration at any time. ADEQ shall approve a new prescribed burn even if the F/SLM has failed to amend a registration if the F/SLM has complied with the other provisions of this Article.
- F. ADEQ shall accept a facsimile as a means of complying with the deadline for registration. If a facsimile is submitted, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing receipt of each registration. If ADEQ and the F/SLMs jointly develop an electronic filing and reporting system, the original paper form may be waived, and ADEQ shall notify all F/SLMs of this change.
- G. No later than 14 days before a F/SLM requests permission to proceed with a registered burn project other than a prescribed natural fire, the F/SLM shall submit a Burn Plan to ADEQ, as described in R18-2-1504. A Burn Plan for a prescribed natural fire shall be submitted as prescribed by R18-2-1508.

R18-2-1504. Burn Plan Contents

- A. Each F/SLM planning a prescribed burn, other than a prescribed natural fire, shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. The F/SLM shall provide the following information on the "Burn Plan" form to facilitate the Daily Burn authorization process under R18-2-1505:
 1. An emergency telephone number that is answered 24 hours a day;
 2. Burn prescription;
 3. Smoke management prescription;
 4. The number of acres to be burned, the type of fuel, and the ignition technique to be used;
 5. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
 6. Modeling of smoke impacts for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. Air quality modeling for these areas is mandatory unless waived either verbally or in writing by ADEQ. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
 7. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
 8. After consultation with the F/SLM, any other information needed by ADEQ to assist in the Daily Burn authorization process.
- B. A Burn Plan shall be submitted for a prescribed natural fire as prescribed by R18-2-1508.

R18-2-1505. Burn Requests and Authorization

- A. Each F/SLM planning a prescribed burn, other than a prescribed natural fire, shall complete and submit to ADEQ the "Daily Burn Request" form supplied by ADEQ. The F/SLM shall include the following information on the Daily Burn Request form:
 1. The F/SLM conducting the burn;
 2. The area to be burned per day with reference to the Burn Plan, including size and legal location; and
 3. Any local conditions or circumstances known to the F/SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.
- B. After consultation with the F/SLM, ADEQ may request additional information to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process. This information may include same day on-site and area meteorological, smoke dispersion, or air quality measurements.
- C. The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.
- D. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM. If ADEQ does not communicate its decision, or a confirmation that the Burn Request was received, by 10 p.m., the burn is deemed approved.
- E. Except as provided in subsection (D), an F/SLM shall not

Arizona Administrative Register
Notices of Final Rulemaking

ignite a prescribed burn without receiving the approval of ADEQ.

- F. If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall cease ignitions and take appropriate action to reduce further smoke impacts, unless after consultation with ADEQ, the smoke management prescription is modified.
- G. Burn authorization for prescribed natural fires shall be as prescribed by R18-2-1508.
- H. The F/SLM in whose jurisdiction a wildfire occurs shall report all wildfires greater than 100 acres on a daily basis to ADEQ. The F/SLM shall include in the report the location, estimated control date, and estimated incident size of each wildfire. The F/SLM shall provide information on projected smoke and air quality impacts and on estimated control size upon request by ADEQ.

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request pursuant to R18-2-1505 by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active prescribed natural fires and consideration of potential long-term emissions estimates;
3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;
9. Protection of the national visibility goal for Class I Areas pursuant to § 169A(a)(1) of the Act; and
10. Minimization of smoke impacts in Class I Areas, roads or highways, airports, areas that are non-attainment for particulate matter, carbon monoxide non-attainment areas, or other smoke-sensitive areas.

R18-2-1507. Burn Accomplishment; ADEQ Recordkeeping

- A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. The F/SLM shall include the following information on the Burn Accomplishment form:
 1. Any known conditions or circumstances that could impact the Daily Burn decision process;
 2. The subsequent acreage accomplishments;
 3. The BMP for emission reduction described in R18-2-1509 that the F/SLM used to manage the smoke from the burn.
- B. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2 p.m. of the business day following the approved burning.
- C. The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.
- D. ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for 5 years.

R18-2-1508. Prescribed Natural Fires; Plan; Authorization;

Monitoring; Inter-agency Consultation

- A. A F/SLM shall notify ADEQ of any potential prescribed natural fire when it is projected to attain a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.
- B. For each prescribed natural fire that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Prescribed Natural Fire Plan in a format approved by ADEQ. The F/SLM shall submit the Prescribed Natural Fire Plan to ADEQ as soon as practicable but no later than 72 hours after the prescribed natural fire is 1st observed. The F/SLM shall include the following information in the Prescribed Natural Fire Plan:
 1. An emergency telephone number that is answered 24 hours a day;
 2. Burn prescription and anticipated emissions;
 3. The daily anticipated growth in the number of acres potentially burned;
 4. The maximum allowable perimeter or size;
 5. The type or types of fuel involved;
 6. The anticipated duration of the prescribed natural fire;
 7. The anticipated weather on site;
 8. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the standard agency scale for that F/SLM; and
 9. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.
- C. ADEQ shall approve or disapprove a Prescribed Natural Fire Plan within 3 hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Prescribed Natural Fire Plan. If ADEQ fails to respond to the submittal of the Prescribed Natural Fire Plan, approval of the prescribed natural fire may be assumed by the F/SLM. Approval by ADEQ of a Prescribed Natural Fire Plan shall be binding upon ADEQ for the duration of the prescribed natural fire project, unless the prescribed natural fire creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and the development of a joint action plan.
- D. The F/SLM shall submit a Daily Status Report for each prescribed natural fire to ADEQ for each day of the burn that the fire perimeter increases. The F/SLM shall include daily anticipated growth and location of the prescribed natural fire in the Daily Status Report.

R18-2-1509. Emission Reduction Techniques; BMP

- A. Each F/SLM conducting a prescribed burn shall implement as many BMP for emission reduction as are feasible for the specific burn and shall include the BMP in the Burn Accomplishment submitted pursuant to R18-2-1507.
- B. The following measures are considered BMP:
 1. Reducing biomass by use of techniques such as yarding or consolidation of unmerchandisable material, multi-product timber sales or public firewood access, when economically feasible. When allowing public firewood access, provide information on the adverse impacts of using green or wet wood as fuel;
 2. Burning in seasons characterized by meteorological conditions that allow for good smoke dispersion, especially March 15 through September 15;
 3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;
 4. Igniting burns under good-to-excellent ventilation conditions and suspending operations under poor smoke dis-

Notices of Final Rulemaking

- person conditions;
5. Considering smoke impacts on local community activities and land users;
 6. Burning only essential fuels to meet resource management objectives;
 7. Minimizing duff consumption and smoldering through fuel moisture considerations;
 8. Minimizing dirt content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
 9. Burning piles when other burns are not feasible, such as when snow or rain is present;
 10. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
 11. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3 p.m. to prevent trapping smoke in inversions or diurnal windflow patterns;
 12. Using chunking of piles and other consolidations of burning material to enhance fuel consumption and to minimize smoke production;
 13. Implementing maintenance burning in a periodic rotation mimicking natural fire cycles to reduce excessive fuel accumulations and subsequent excessive smoke production through smoldering or wildfire;
 14. Using prescribed natural fires and unplanned ignitions; and
 15. Managing smoke impacts as follows:
 - a. Limiting smoke impacts to roads, highways, and airports to the amounts, frequencies, and durations consistent with any guidance provided by highway and airport personnel;
 - b. Using appropriate signing if smoke will impact any roadways;
 - c. Notifying control towers if smoke will intrude in any air traffic control zone;
 - d. Determining nighttime impacts and taking appropriate precautions; and
 - e. Contacting appropriate authorities as needed regarding smoke or visibility impacts.

R18-2-1510. Monitoring

- A. ADEQ may require a F/SLM to monitor weather and air quality before or during a prescribed burn, excluding prescribed natural fires, which are governed by R18-2-1508, if necessary to accurately predict smoke impacts.
- B. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, a carbon monoxide non-attainment area, or other smoke-sensitive area:
 1. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, or stability; and
 2. Smoke plume measurements, using a format supplied by ADEQ.
- C. A F/SLM shall make monitoring information required pursuant to subsection (B) available to ADEQ on the business day following the burn ignition.
- D. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations, or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ, if necessary to accurately predict smoke impacts.
- E. The F/SLM shall keep on file for 1 year following the burn

date any monitoring information required pursuant to this Section.

R18-2-1511. Burner Qualifications

- A. All burns shall be conducted by personnel trained in prescribed fire and smoke management techniques to the minimum level required by the F/SLM in charge of the burn.
- B. A Prescribed Fire Manager or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns shall have smoke management training obtained through 1 of the following:
 1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course dedicated to smoke management; or
 2. Attendance at an ADEQ-approved smoke management workshop.

R18-2-1512. Public Awareness Program

At the Director's discretion, a public education and awareness program may be conducted by ADEQ in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. If conducted, the program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.

R18-2-1513. Surveillance and Enforcement

- A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request data described pursuant to R18-2-1505 as well as matching burn approval with actual conditions and smoke dispersion. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.
- B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a 5-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than 10 thousand dollars per day per violation pursuant to A.R.S. § 49-463.

R18-2-1514. Oversight

- A. An F/SLM planning to make a change to any long-term established remote automated weather station shall give ADEQ notice and an opportunity to comment before making the change.
- B. On or before August 15 of each year, each F/SLM shall submit to ADEQ a report generally describing each of the following:
 1. The emissions reductions for each project from the previous year as a result of using BMP. Emissions reductions may be estimated using methods and emission factors developed jointly by ADEQ and F/SLMs;
 2. The smoke management cost estimates for each active project from the previous year including estimates for monitoring, training, applying emission reduction techniques, research, and compliance with the requirements of this Article; and
 3. Any research on or development of innovative techniques for emission reductions.

Notices of Final Rulemaking

R18-2-1515. Forms; Electronic Copies; Information Transfers

A. ADEQ shall make available on paper and in electronically-readable format any form required to be developed by ADEQ and completed by a F/SLM.

B. After consultation with the F/SLM, ADEQ may require each F/SLM to provide data in a manner that allows for and facilitates electronic transfers of information.

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

1. **Sections Affected**
R20-5-507
- Rulemaking Action**
Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 23-491.04
Implementing statute: A.R.S. §§ 23-491.06
3. **The effective date of the rules:**
October 8, 1996
4. **A list of all previous notices appearing in the Register, addressing the final rule:**
Notice of Rulemaking Docket Opening:
2 A.A.R. 1416, April 5, 1996
Notice of Proposed Rulemaking:
2 A.A.R. 1595, May 3, 1996
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Cathy Neville, Assistant Director
Division of Occupational Safety and Health

Address: Industrial Commission of Arizona
800 West Washington Street, Suite 203
Phoenix, Arizona 85007

Telephone: (602) 542-1695
Facsimile: (602) 542-1614
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule will bring the state's rules for elevators and escalators into conformance with the technological advances currently being utilized by the industry. Because the national elevator and escalator manufacturers are currently producing elevators and escalators to meet the new ASME A17.1-1993 Safety Code for Elevators and Escalators, the Industrial Commission elevators and escalators will operate in accordance with the code which they were designed, manufactured, and installed to meet. Existing elevator and escalator installations are required to continue to meet the code requirements that were in effect at the time of installation.
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.
8. **The summary of the economic, small business, and consumer impact:**
There will be no cost to consumers or small business by adopting and enforcing the ASME A17.1. Safety Code for Elevators and Escalators because the equipment was designed, manufactured, and installed in accordance with this code. The rule will ensure that once installed, these newer elevators and escalators will operate in accordance with the code. Existing elevators and escalator installations are required to continue to meet the code requirements that were in effect at the time of installation.
9. **A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):**
In response to a preliminary review by GRRC staff, the following changes were made to the text of the rule:

A change was made to clarify the amended revision applied only to elevators, escalators, dumbwaiters, moving walks, material lifts, or dumbwaiters with a automatic transfer device, wheelchair lifts and stairway chairlifts installed on or after the effective date of this rule amendment and that all equipment installed prior to this rule amendment shall comply with the ASME code in effect at the time of installation or, as an alternative, the owner of the equipment may comply with the newly adopted rule.

Notices of Final Rulemaking

10. A summary of the principal comments and the agency response to them:

No comments, either oral or written, were received.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

ASME A17.1-1993 Safety Code for Elevators and Escalators. The American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, New York 10017.

This incorporation by reference is found in R20-5-507.

13. Was this rule previously adopted as an emergency rule?

No.

14. The full text of the rules follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 5. ELEVATOR SAFETY ADMINISTRATIVE REGULATIONS

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices, Wheelchair Lifts and Stairway Chairlifts

ARTICLE 5. ELEVATOR SAFETY ADMINISTRATIVE REGULATIONS

R20-5-507. Safety Code for Elevators, Escalators, Dumbwaiters, Moving Walks, Material Lifts, and Dumbwaiters with Automatic Transfer Devices, Wheelchair Lifts and Stairway Chairlifts.

A. Every owner or operator pursuant to A.R.S. § 23-491.02 of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, wheelchair lift, or stairway chair lift installed on or after the effective date of

this rule shall comply with the ASME/ANSI A-17.1-1990 ASME A17.1-1993 Safety Code for Elevators and Escalators, incorporated herein by reference and on file with the Office of the Secretary of State. Every other owner or operator of an elevator, escalator, dumbwaiter, moving walk, material lift, or dumbwaiter with an automatic transfer device, wheelchair lift, or stairway chair lift shall comply with the ASME A17.1 Safety Code for Elevators and Escalators in effect at the time of installation or, as an alternative, may comply with ASME A17.1 - 1993. A copy of this referenced material is also available for review at the Industrial Commission of Arizona and may be obtained from the American Society of Mechanical Engineers. This incorporation by reference does not include amendments or editions to ASME A17.1 published after December 31, 1993.

B. No change.